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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

WYATT B., *et al.*,

Plaintiffs,

v.

TINA KOTEK, *et al.*,

Defendants.

Case No. 6:19-cv-00556

**PLAINTIFFS' MOTION IN LIMINE
TO PRECLUDE DEFENDANTS
FROM OBTAINING AND USING
CONFIDENTIAL CHILD WELFARE
RECORDS**

Oral Argument Requested

LR 7-1 Certification

Plaintiffs conferred with defendants by telephone on April 25, 2024; Defendants oppose this motion.

MOTION

In their case-in-chief, Plaintiffs intend to call two former foster youths, K.H. and S.S., to testify. *See* ECF No. 385 at 18-19, 32-34. As further explained in Plaintiffs' Witness Statements, K.H. and S.S. will testify about their experiences in the Oregon Department of Human Service's custody, which include frequent placement moves, insufficient services, and aging out of foster care without having been connected to a permanent family, among others. *See id.*

Plaintiffs move to preclude Defendants from obtaining K.H. and S.S.'s child welfare and juvenile court records and files, including their supplemental confidential files, for any purpose, and from obtaining or utilizing information derived from such records absent express permission from the Court. In testifying, K.H. and S.S. do not waive the privilege and confidentiality of these records, which are firmly protected from use at trial pursuant to Oregon law. *See* ORS 409.225(1); *see also State v. Wixom*, 275 Or. App. 824, 833 (Or. Ct. App. 2015) ("Generally, all DHS records pertaining to an individual, family, or other recipient of DHS services are confidential pursuant to ORS 409.225(1).").

ORS 409.225(1) provides in relevant part:

In the interest of family privacy and for the protection of children, families and other recipients of services, the Department of Human Services may not disclose or use the contents of any child welfare records, files, papers or communications that contain any information about an individual child, family or other recipient of services for purposes other than those directly connected with the administration of child welfare laws or unless required or authorized by ORS 419A.255 or 419B.035. The records, files, papers and communications are confidential and are not available for public inspection.

Defendants' use of K.H. and S.S.'s child welfare records at trial for cross-examination or otherwise is not "directly connected with the administration of child welfare laws" and is neither required nor authorized under ORS 419A.255 or 419B.035.

ORS 419A.255 lists the entities and individuals that may inspect and receive these records and for what purpose and does not encompass Defendants' purported inspection or use of the records for any purpose at trial. *See* ORS 419A.255(1)(b), (2)(b). The statute further provides in relevant part:

[N]o information appearing in the record of the case or in the supplemental confidential file may be disclosed to any person not described in subsections (1)(b) and (2)(b) of this section, respectively, without the consent of the court, except for purposes of evaluating the child, ward, youth or adjudicated youth's eligibility for special education as provided in ORS chapter 343, and no such information may be used in evidence in any proceeding to establish criminal or civil liability against the child, ward, youth or adjudicated youth, whether such proceeding occurs after the child, ward, youth or adjudicated youth has reached 18 years of age or otherwise

ORS 419A.225(3). The legislature has thus determined that the confidentiality of these records is paramount to a party's need to cross-examine or otherwise use the records in a civil or criminal proceeding against the subject child, even if the child is now an adult. It follows, therefore, that any interest Defendants have in using K.H. and S.S.'s records in a civil proceeding in which their liability is not at issue pales in comparison to the need to preserve the records' confidentiality and K.H. and S.S.'s privacy. *See also Dep't of Human Servs. v. E.J. (In re S.J.)*, 316 Or. App. 537, 550 (Or. Ct. App. 2021) (concluding "DHS cannot defeat the privilege [in ORS 419A.255] because the particular report or other material relating to the ward originated from its own files that it still possesses").

ORS 419B.035 also does not authorize Defendants to use K.H. and S.S.'s child welfare records or information derived therefrom at trial. The statute provides that the Department of

Human Services shall make the records available to specified individuals and entities for specific purposes, none of which apply in this instance. *See* ORS 419B.035(1). It further states that the department may make the records available:

to any person, administrative hearings officer, court, agency, organization or other entity when the department determines that such disclosure is necessary to administer its child welfare services and is in the best interests of the affected child, or that such disclosure is necessary to investigate, prevent or treat child abuse and neglect, to protect children from abuse and neglect or for research when the Director of Human Services gives prior written approval.

ORS 419B.035(3). None of these rationales apply in this instance. Moreover, disclosure and use of these records would serve to embarrass, harass, and intimidate the children to whom they pertain, in direct contravention of the statute's overarching focus on the best interests of the child.

Neither Plaintiffs nor their counsel have or could legally access K.H. or S.S.'s records without express authorization. Defendants should be precluded from doing the same. Moreover, the Court should deny any such request for access as contrary to the best interests of the children whom Oregon confidentiality laws seek to protect, overly prejudicial to Plaintiffs' case, and designed to embarrass, harass, and intimidate K.H. and S.S.

Accordingly, Plaintiffs respectfully move to preclude Defendants from obtaining K.H. and S.S.'s child welfare and juvenile court records and files, including their supplemental confidential files, for any purpose, and from obtaining or utilizing information derived therefrom absent express permission from the Court.

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DATED this 25th day of April, 2024.

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